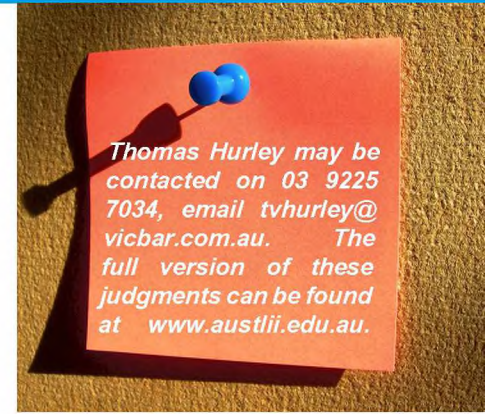


# Federal Court

judgments:

April - June 2012



## COSTS

- **Order that non-party pay costs**

In *Dunghutti Elders Council v Registrar of Aboriginal and Torres Strait Islander Corporations (No 4)* [2012] FCAFC 50 (5 April 2012) a Full Court reviewed authority as to when a court can order a non-party pay the costs of the successful party. It declined to order that the directors of an Aboriginal corporation pay the Registrar's cost without recourse to the assets of the corporation.

## CUSTOMS

- **Tariff concession orders**
- **Substitutability**

In *CEO Customs v Toyota Material Handling Australia Pty Ltd* [2012] FCAFC 78 (29 May 2012) a Full Court concluded the AAT had misapplied the test for substitutability between pedestrian operated "reach trucks" (forklifts) and rider operated "reach trucks" under the *Customs Tariff Act 1995* (Cth). The Full Court concluded the AAT had erred in considering whether the forklifts met the "core criteria" for s269P(1) of the Act in

ordering a tariff concession order be made.

## INCOME TAX

- **Whether personal services business**

In *Cameron v C of T* [2012] FCAFC 76 (30 May 2012) a Full Court considered how a "personal services business" was to be identified for Division 87 of Part 2-42 of the *Income Tax Assessment Act 1987* (Cth).

## CORPORATIONS

- **Managed investment scheme**

In *Waters v Mercedes Holding Pty Ltd* [2012] FCAFC 80 (31 May 2012) a Full Court concluded the onus of proof of an exception within s208(1)(e) of the *Corporations Act 2001* (Cth) lies on the party claiming to fall within an exception.

## INDUSTRIAL LAW

- **Drug testing**
- **Jurisdictional error**

In *CFMEU v Wagstaff Piling Pty Ltd* [2012] FCAFC 87 (14 June 2012) the CFMEU contended

that cl 48 of a union collective agreement did not authorise random testing for drugs and alcohol. This was accepted by a Commissioner in an application for dispute resolution under s709 of the *Fair Work Act 2009* (Cth). The employer successfully appealed to a Full Bench under s604. The application by the CFMEU for a constitutional writ to quash the decision of the Full Bench was dismissed on the Full Court finding jurisdictional error was not made out.

## INDUSTRIAL LAW

- **Right of entry for discussions**

In *Australian Meat Industry Employees' Federation v Fair Work Australia* [2012] FCAFC 85 (8 June 2012) a Full Court considered the right of entry given to union officials under Division 2 of Part 3-4 of the *Fair Work Act* (2009) to interview persons (s482) and hold discussions (s484). The Full Court concluded the Full Bench had not made any jurisdictional error. ●



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